

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP No.4841 of 2018

Date of Decision: 19.03.2018

Balwan

....Petitioner

Versus

State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Prateek Rathee, Advocate
for the petitioner.

Mr. Anil Mehta, D.A.G., Haryana.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of *mandamus* with a direction to release the petitioner on parole for a period of three weeks under Section 3(1)(a) of the Haryana Good Conduct Prisoners (Temporary release) Act, 1988 (hereinafter referred to as 'the Act, 1988') for the purpose of attending his father, who is seriously ill.

The petitioner was arrested in case FIR No.276 dated 16.09.2007 under Section 302 of the Indian Penal Code registered at Police Station Sadar Bahadurgarh, District Jhajjar. He was convicted and sentenced to undergo life imprisonment vide judgment dated 22/29.04.2013. The appeal filed against said judgment of conviction and order of sentence is pending before this Court.

Learned counsel for the petitioner submits that the father of the petitioner is bed ridden and is seriously ill. He is having 87% physical disability because of paralysis attack. Learned counsel also submits that the

petitioner requested the Superintendent District Jail, Jhajjar for initiating the temporary release process but his request was declined on the ground that case FIR No.453 dated 21.05.2016 under Sections 42/45 of the Prisons Act at Police Station Jhajjar has been registered for committing the jail offence. Learned counsel also submits that the petitioner has been acquitted in that case vide judgment dated 15.12.2016. The petitioner is not a hardcore criminal, whereas, even a hardcore criminal is also entitled for benefit of temporary release in view of notification dated 21.09.2015. At the end, learned counsel for the petitioner submits that the petitioner has undergone actual sentence of more than ten years and has not availed even a single day parole and hence, the question of misuse of such concession does not arise at all.

Notice of motion in the case was issued to the respondents-State and reply has been filed, which is already on record.

Learned State counsel, on the basis of reply, submits that the petitioner is a convict not only in a murder case but he has been convicted in three other different cases as well. Learned counsel further submits that the petitioner is also facing trial in some of the cases and he has been acquitted in certain cases. Learned counsel also submits that the petitioner is Hardcore criminal and he was involved in a murder case committed in the premises of District Jail, Gurugram. Learned counsel further submits that earlier the petitioner had filed ***Criminal Writ Petition No.188 of 2017*** for grant of parole for his marriage. This fact was verified and found to be false. A fine of Rs.5,000/- was imposed vide order dated 23.02.2017. At the end, learned State counsel submits that the father of the petitioner has been discharged from the hospital on 19.02.2018.

Heard the arguments of learned counsel for the petitioner and have also perused the documents available on the file as well as all relevant provisions of the Haryana Good Conduct Prisoners (temporary release) Amendment Act of 2014. The claim of the petitioner has been rejected only on the ground that he is a hardcore criminal and is involved in many serious offences. Sections 3(1)(b) and 3(2)(b) of the Act, 1988 are relevant for deciding the controversy, in the case, in hand, which are reproduced as under :-

“3(1) The State Government may, in consultation with the District Magistrate or any other officer appointed in this behalf, by notification in the Official Gazette and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2), any prisoner, if the State Government is satisfied that –

(a) xx xx xx

(b) the marriage of prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, sister's son or daughter is to be celebrated; or

(c) xx xx xx

(d) xx xx xx

(2) The period for which a prisoner may be released shall be determined by the State Government so as not to exceed –

(a) xx xx xx

(b) where the prisoner is to be released on the ground specified in clause (b) or clause (d) of sub-section (1), four weeks; and

(c) xx xx xx

The claim of the petitioner has been declined only on the ground that he is a hardcore prisoner. The hardcore prisoner has been

defined under the Haryana Good Conduct Prisoners (Temporary Release)

Amendment Act, 2012, which is reproduced as under :-

“2. (aa) ‘hardcore prisoner’ means a person, who –

- (i) has been convicted of dacoity, robbery, kidnapping for ransom, murder with rape, serial killing, contract killing, murder or attempt to murder for ransom or extortion, causing grievous hurt, death or waging or attempting to wage war against Government of India, buying or selling minor for purposes of prostitution or rape with a woman below sixteen years of age or such other offence as the State Government may, by notification, specify; or;
- (ii) during any continuous period of five years has been convicted and sentenced to imprisonment twice or more for commission of one or more of offences mentioned in chapter XII or XVII of the Indian Penal Code, except the offences covered under clause (i) above, committed on different occasions not constituting part of same transaction and as a result of such convictions has undergone imprisonment at least for a period of twelve months:

Provided that the period of five years shall be counted backwards from the date of second conviction and while counting the period of five years, the period of actual imprisonment or detention shall be excluded.

Explanation – A conviction which has been set aside in appeal or revision and any imprisonment undergone in connection therewith shall not be taken into account for the above purpose; or

- (iii) has been sentenced to death penalty ; or
- (iv) has been detected of using cell phone or in possession of cell phone/SIM card inside the jail premises; or

(v)failed to surrender himself within a period of ten days from the date on which he should have so surrendered on the expiry of the period for which he was released earlier under this Act.”

There is a specific provision for hardcore prisoners under Section 5A of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012, which is reproduced as under :-

“5A. Special Provisions for Hardcore Prisoners –

Notwithstanding anything contained in section 3 and 4, a hardcore prisoner shall not be released on temporary basis or on furlough:

Provided that a hardcore prisoner may be allowed to attend the marriage of his child, grand-child or sibling; or death of his grand parent, parent, grand parent-in-laws, parent-in-laws, sibling, spouse or child, under the armed police escort, for a period of forty eight hours to be decided by the concerned Superintendent Jail and intimation in this regard with full particulars of hardcore prisoner being released, shall be sent to the concerned District Magistrate and Superintendent of Police within twenty four hours.”

Vide Section 2 of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2014, following proviso has been appended after Section 5A :-

“ Provided further that a hardcore prisoner may be released on temporary basis to attend the marriage of his daughter for ninety six hours and for the marriage of his son for seventy two hours under an armed police escort, to be decided by the concerned Superintendent of Jail. He shall intimate within twenty four hours, the concerned District Magistrate and Superintendent of Police in this regard with full

particulars of the hardcore prisoner being so released.”

From the provisions as reproduced above, it is clear that even a hardcore prisoner is entitled to go on parole for a temporary period of 96 hours while in police custody.

The petitioner does not fall under the category of hardcore prisoner and moreover, he is not a hardcore prisoner. Section 6(2) of the Act provides that notwithstanding anything contained in Sections 3 and 4 of the Act, no person is entitled to be released under the Act, if on the report of the District Magistrate, where consultation with him is necessary, the State Government or an officer authorised by it in this behalf is satisfied that his release is likely to endanger the security of the State or the maintenance of public order. Meaning thereby, the release of a prisoner on parole can be declined in case his release on parole is likely to endanger the security of the State or the maintenance of public order. The recommendation made by the concerned authority for not releasing the petitioner on parole is merely that the petitioner is undergoing life imprisonment and is involved in many cases. No such eventuality has been mentioned neither in the reply nor in the arguments raised by learned State counsel. The observations made in case **CRM-M No.34013 of 2009** titled as **Varun @ Gullu v. State of Haryana and others** decided on **26.04.2010** are relevant, which are as under :-

“ No doubt parole or furlough is a concession granted to a prisoner, but grant of such concession is regulated by a statute and on fulfilment of conditions prescribed therein, a prisoner is entitled to parole. The concession of releasing a prisoner on parole or furlough is circumscribed by a statute; therefore, the release of a

prisoner is in exercise of the right created under that statute. Therefore, the authorities under the Act cannot act arbitrarily, capriciously or without due application of mind. The statutory power to release a prisoner on parole or furlough is to be exercised objectively keeping in view the intention of the legislature and the purpose of admitting a prisoner to parole or furlough.

In the cases, which have come up earlier before this Court as per judgments referred to by the learned counsel for the petitioners, the usual ground to decline parole or furlough by the authorities under the Act is that there is apprehension of breach of peace, in case the prisoner is released on parole or furlough. The question which requires our consideration is what endangers the security of the State or the maintenance of public order and whether the recital in the order that there is apprehension of breach of peace, if prisoner is released on parole or furlough, satisfies the conditions contemplated under Section 6 of the Act. We find that the authorities under the Act have been consistently declining the request for parole or furlough only for the reason of apprehension of breach of peace, whereas there is no such condition under the Act. This is so in spite of numerous judgments of this Court that apprehension of breach of peace by a prisoner is not a ground to decline the request for parole or furlough.”

Admittedly, the administrative decision is subject to judicial review in exercise of supervisory writ jurisdiction of this Court under Article 226 of the Constitution of India. Although this Court is not to act as an Appellate Court but the administrative action or even a non-statutory administrative action may relate to judicial review. The violation of constitutional provisions or any statutory provision would invalidate the administrative decision. However, every administrative decision must be

reasonable. The principle of reasonableness known as 'Wednesbury principle', which is having three elements i.e the authority should take all relevant facts into consideration; it should exclude or irrelevant facts from consideration; and the decision should neither be perverse nor irrational. 'Perverse' means improper or contradictory but in the context of administrative decision, it symbolizes a decision not supported by any evidence and 'irrational' means an absurd or illogical decision.

In the present case, all these factors have not been considered by the competent authority and as such, it is a complete violation of the dictate of law in respect of administrative decision.

Accordingly, the present petition is allowed and the petitioner is directed to be released on parole for a period of ten days in the mid of April, 2018. On the expiry of period of parole of ten days, the petitioner is directed to surrender before the jail authorities. However, the parole shall be subject to the following terms and conditions :-

(i) The petitioner shall furnish a personal bond in the sum of Rs.2,00,000/- with one local surety of the like amount to the satisfaction of the Jail Superintendent.

(ii) The petitioner shall furnish a telephone number to the Jail Superintendent on which he can be contacted, if required. After his release, he shall also inform his telephone number to the SHO of the police station concerned.

(iii) The petitioner shall keep away from the area around the residence of the victim and his/her family members.

(iv) Immediately upon the expiry of period of parole, the

petitioner shall surrender himself before the Jail Superintendent.

(v)The period of parole shall be counted from the day after the date when the petitioner is released from jail.

19.03.2018
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No